

Sklar



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Twigg Aerospace Components

File: B-236332

Date: November 21, 1989

DIGEST

Award properly was made to the lowest priced, technically acceptable offeror on the basis of initial offers where the solicitation advised offerors of that possibility and the existence of full and open competition under the solicitation clearly demonstrated that such award would result in the lowest overall cost to the government.

DECISION

Twigg Aerospace Components protests the Air Force's award of a contract to Tri-Industries, Inc., for aircraft engine seals under request for proposals (RFP) No. F41608-89-R-2214, issued by the San Antonio Air Logistics Center, San Antonio, Texas. Twigg contends that the award was improper because it was based on initial proposals without conducting discussions with all offerors in the competitive range or requesting best and final offers. We deny the protest.

The RFP contemplated the award of a firm, fixed-price contract with the award decision to be made essentially to the technically acceptable low offeror. The RFP advised offerors that the government might award a contract on the basis of initial offers received, without discussions and that, therefore, each initial offer should contain the offeror's best terms from a cost or price and technical standpoint.

The RFP listed three approved sources for the item, Twigg, Tri-Industries and General Electric, and permitted offers from unapproved sources who could establish their acceptability. Each of these approved sources submitted a proposal, as did one unapproved source. Tri-Industries' offer was low, with a unit price of \$431, followed by Twigg's offer of \$432.37. The contracting officer determined that there was adequate competition, since all

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approved sources had submitted offers and the price differential between the low and next low offer was less than 1 percent. Because the low-priced offers were from approved sources, there were no technical questions or deficiencies to be discussed and the contracting officer determined that no discussions were necessary. The agency advised Tri-Industries that a revised prompt payment provision had to be incorporated into the contract, and awarded the contract with the revised prompt payment terms.

Twigg protests that it was improper to award the contract without holding discussions because the Air Force allegedly cannot demonstrate that acceptance of the most favorable initial proposal would result in the lowest overall cost. Twigg contends that the closeness of prices alone should have justified discussions. The protester also points out that the two lowest prices were more than 60 percent higher than prices paid for these same seals under Air Force contracts for comparable quantities as recently as 1985, and asserts on this basis that it was unreasonable to conclude that acceptance of the lowest priced initial proposal would result in the lowest cost.

As a general rule, a contracting agency may make an award on the basis of initial proposals, without holding discussions, where the solicitation, as here, advises offerors of this possibility, and the existence of full and open competition or accurate prior cost experience clearly demonstrates that acceptance of an initial proposal will result in the lowest overall cost to the government at a fair and reasonable price, and where award is in fact made without any discussion with any offeror. 10 U.S.C § 2305(b)(4)(A), (ii) (1988); Federal Acquisition Regulation (FAR) § 15.610(a)(3) (FAC 84-16); See Phone-A-Gram Sys., Inc., B-228546; B-228546.2, Feb. 17, 1988, 88-1 CPD ¶ 159.


Here, the RFP satisfied the notice requirement, since its contract award clause cautioned offerors that award might be based on initial proposals and specifically advised them to submit their best prices. Twigg's contention that it would have lowered its price if it had an opportunity to do so during discussions is unsupported and self-serving. As indicated above, the solicitation specifically cautioned offerors to submit their lowest price with their initial proposals. There is nothing in Twigg's proposal which would

reasonably indicate to the agency that Twigg could have lowered its price.^{1/}

FAR § 15.610(a)(3) requires the existence of full and open competition or accurate prior cost experience to support the determination to accept the low initial offer. Here, the procurement was conducted under full and open competition as defined by the FAR, that is, all responsible sources were permitted to compete. FAR § 6.003 (FAC 84-38). Competition was adequate to ensure a fair and reasonable price, and award was in fact made to the lowest priced offeror. While the agency had discretion to hold discussions if it had questions concerning the higher prices submitted under this RFP, the Air Force was not required to do so here. In these circumstances, we have no basis to object to award based on initial proposals.

Finally, Twigg protests, as improper, the Air Force's request prior to award that Tri-Industries agree to include FAR § 52.232-25 (FAC 84-45), which revised the prompt payment provision originally contained in the RFP. This request by the Air Force did not permit the awardee to change its price. The awardee was asked to incorporate in its proposal a revised contract clause which was required by Pub. L. 100-496 for contracts awarded after March 31, 1989. That amendment made certain changes with respect to the government's obligations regarding prompt payment of money due contractors. It is unlikely that these changes would have had any impact on the competition. Thus, the request had no effect on the price standing of offerors. We therefore view this request as in communication which did not affect the selection decision. The most the protester would have been allowed to do is similarly accept or reject the clause.

The protest is denied.


James F. Hinchman
General Counsel

^{1/} We note in this connection that Twigg conditioned its initial proposal price on "'price in effect' on material at the time of receipt of order," indicating that it was not even certain that its price would hold.